

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING SANIHA &
ASSOCIATES, INC. DBA
BROTHERS FUTURE FOOD
MART; RN101432268**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2003-1249-PST-E

I. JURISDICTION AND STIPULATIONS

At its **JUN 28 2006** agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Saniha & Associates, Inc. dba Brothers Future Food Mart ("Saniha") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Saniha, represented by Mr. Donald H. Grissom of the law firm of Grissom & Thompson, L.L.P., appear before the Commission and together stipulate that:

1. Saniha owns and operates a convenience store with retail sales of gasoline located at 4225 Miller Avenue, Fort Worth, Tarrant County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Saniha agree that the Commission has jurisdiction to enter this Agreed Order, and that Saniha is subject to the Commission's jurisdiction.
4. Saniha received notice of the violations alleged in Section II ("Allegations") on or about May 14, 2003.
5. The occurrence of any violation is ~~in dispute~~ and the entry of this Agreed Order shall not constitute an admission by Saniha of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

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6. An administrative penalty in the amount of fifteen thousand six hundred dollars (\$15,600.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Saniha has paid six hundred fifty dollars (\$650.00) of the administrative penalty. The remaining amount of fourteen thousand nine hundred fifty dollars (\$14,950.00) of the administrative penalty shall be payable in 23 monthly payments of six hundred fifty dollars (\$650.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Saniha fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Saniha to meet the payment schedule of this Agreed Order constitutes the failure by Saniha to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Saniha have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on or before December 3, 2003, Saniha equipped each tank with overfill prevention equipment.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Saniha has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Saniha is alleged to have violated:

1. TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.48(c), 334.50(b)(1)(A), and 334.50(d)(1)(B)(ii) by failing to conduct effective manual or automatic inventory control procedures for all USTs in accordance with 30 TEX. ADMIN. CODE § 334.48(c) (relating to Inventory Control) and failing to reconcile of inventory control records on a monthly basis and failing to monitor the unleaded plus tank (tank number 1) in a manner which will detect a release at a frequency of at least once each month, not to exceed 35 days between each monitoring, as documented during a TCEQ investigation on April 29, 2003.
2. TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) by failing to equip each tank with overfill prevention equipment, as documented during a TCEQ investigation on April 29, 2003.

III. DENIALS

Saniha generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Saniha pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Saniha's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Saniha & Associates, Inc. dba Brothers Future Food Mart, Docket No. 2003-1249-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Saniha shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin conducting effective manual or automatic inventory control procedures for all USTs in accordance with 30 TEX. ADMIN. CODE § 334.48(c) (relating to Inventory Control).

- b. Within 30 days after the effective date of this Agreed Order, conduct reconciliation of inventory control records on a monthly basis for the UST system and monitor the unleaded plus tank in a manner which will detect a release at a frequency of at least once every month, in accordance with 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and (b)(1)(A) (relating to Release Detection); and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a. and 2.b., including copies of the inventory control and reconciliation records.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Compliance Tracking Team
Enforcement Division MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mr. Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2301 Gravel Drive
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon Saniha. Saniha is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Saniha fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Saniha's failure to comply is not a violation of this Agreed Order. Saniha shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Saniha shall notify the Executive Director within seven days after Saniha becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Saniha shall be made in writing to the Executive Director. Extensions are not effective until Saniha receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Saniha in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Saniha, or three days after the date on which the Commission mails notice of the Order to Saniha, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen H White
For the Commission

Robert Eugene Penland
For the Executive Director

5/10/06
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

NASIM ALI
Signature

NASIM ALI
Name (Printed or typed)

Authorized representative of

Saniha & Associates, Inc. dba Brothers Future Food Mart

3-21-06
Date
President
Title

Instructions: Send the original signed Signature Page and all pages of this Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 11, 2006

CERTIFIED MAIL

Nasim Aziz, President
Saniha & Associates, Inc.
4225 Miller Avenue
Fort Worth, Texas 76119

Donald H. Grissom, Attorney
Grissom & Thompson, L.L.P.
609 West 10th Street
Austin, Texas 78701

RE: Saniha & Associates, Inc. dba Brothers Future Food Mart
TCEQ Docket No. 2003-1249-PST-E; TCEQ Registration No. 66381
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an Order issued by the Commission.

Questions regarding the Order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the Order, then please contact Tim Mees of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in dark ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/tm

Enclosure

cc: Amie Richardson, Staff Attorney, TCEQ Litigation Division (MC 175)
Rebecca Clausewitz, Enforcement Coordinator, TCEQ Enforcement Division
(MC R-14)
Robert Gilley, Regional Contact, TCEQ Regional Office (MC R-4)